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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/768,308	01/30/2004	Richard Wayne Buskens	LUC-450/Buskens 6-1-1-1-2	6327
32205 7590 01/24/2008 PATTI, HEWITT & AREZINA LLC ONE NORTH LASALLE STREET 44TH FLOOR CHICAGO, IL 60602			EXAMINER WANG, RONGFA PHILIP	
			ART UNIT 2191	PAPER NUMBER
			MAIL DATE 01/24/2008	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Office Action Summary**

Application No.

10/768,308

Applicant(s)

BUSKENS ET AL.

Examiner

Philip Wang

Art Unit

2191

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE \_\_\_\_\_ MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 24 October 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-9 and 11-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9 and 11-22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

***Detail Action***

1. This office action is in response to the application filed on 10/24/2007.
2. Per Applicant's request, claims 1, 11, 16 and 21 are amended; claim 10 is canceled; claim 22 is entered.
3. The 35 U.S.C. 112 first paragraph rejections of claims 13 and 20 are withdrawn in view of the Applicant's persuasive arguments.
4. Claims 1-9, and 11-22 are pending.

***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

5. Claims 1-9, 11-15, 21 and 22 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Claims 1-15, 21 and 22 recites a computer-readable signal-bearing media. A computer-readable signal-bearing medium can be interpreted as signal. Signal is considered as a form of energy and is not considered a patentable subject matter.

On page 10 the specification includes examples of computer-readable signal-bearing medium. Though previous amendment has deleted the example of a computer-readable signal-bearing

medium being a modulated carrier signal, however the term computer-readable signal-bearing medium can be subject matter other than example listed. A computer-readable signal-bearing medium can be signal or wave that is computer-readable. As reasoned above, signal or wave is considered a s form of energy and is not considered a patentable subject matter.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

6. Claims 1-9 and 11-22 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claims 1, 16, and 21 and their dependent claims recite the limitation of "a legacy management system". A legacy management system is a system that manages legacy. The examiner believes there is no disclosure in the specification of "a legacy management system".

7. Claims 1-9 and 11-22 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in

the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Claims 1, 16, and 21 and their dependent claims recite the limitation of "a legacy management system". A legacy management system is a system that manages legacy. The examiner believes there is no disclosure in the specification to enable one skill in the art to make or use such "legacy management system".

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 1, 16, and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by Baughman (US Patent No. 6,408, 399).

As per claim 1,

- a first manager component of a legacy management system that performs one or more first management operations on a software and/or hardware entity; and a second manager component that performs one or more second management operations on the software and/or hardware entity, wherein the second manager component comprise high availability services system software operating in a

high availability domain; wherein the first manager component and the second manager component are configured to concurrently share management responsibilities for the software and/or hardware entity. (c4: 45-65, FIG. 3, "...a disk manage 107 and 117 resides on each computer 10 and 11 to manage file manipulation of the shared disks 12 and 13...").

As per claim 16,

- configuring a software and/or hardware entity for partial control by a first manager component and partial control by a second manager component (c4: 45-65, FIG. 3, "...a disk manage 107 and 117 resides on each computer 10 and 11 to manage file manipulation of the shared disks 12 and 13...").

As per claim 21,

- one or more computer-readable signal-bearing media; and means in the one or more media for configuring a software and/or hardware entity for partial control by a first manager component and partial control by a second manager component (c4: 45-65, FIG. 3, "...a disk manage 107 and 117 resides on each computer 10 and 11 to manage file manipulation of the shared disks 12 and 13...").

9. Claims 1-9, 11-21 are rejected under 35 U.S.C. 102(b) as being anticipated by Anderson (USPGPub. No. 2003/0058796).

As per claim 1, Anderson discloses

- a first manager component that performs one or more first management operations on a software and/or hardware entity; and a second manager component that performs one or more second management operations on the software and/or hardware entity ([0018], for example, line 12-15, "...a traffic manager, a provisioning manager and a signaling manager perform all broadband and narrowband...and connections for all network devices." In this scenario, the first manager component can be a traffic manager/signaling manager; and the second manager component can be a provisioning manager; and the software and/or hardware entity is the network devices. See also, FIG. 2).
- Wherein the first manager component and the second manager component are configured to concurrently share management responsibilities for the software and/or hardware entity (in this scenario the first manager component and the second manager component function concurrently to share management responsibility).

As per claim 2,

the rejection of claim 1 is incorporated;

further Anderson discloses

- the first manager component and the second manager component are communicatively coupled ([0019], for example, "The signaling manager receives its working instructions from the traffic manage and from the provisioning manager...").

As per claim 3,

the rejection of claim 2 is incorporated;

further Anderson discloses

- the first manager component and the second manager component coordinate the one or more first and second management operations to occur in a proper sequence ([0019], for example, "The signaling manager receives its working instructions from the traffic manage and from the provisioning manager..."; [0033], "...decide how to configure the logical networks on top of the physical network resources...").

As per claim 4,

the rejection of claim 1 is incorporated;

further Anderson discloses

- upon detection by the first management component of an event associated with the software and/or hardware entity, the first manager component sends a notification to the second manager component; wherein upon detection by the



second management component of an event associated with the software and/or hardware entity, the second manager component sends a notification to the first manager component([0021], shows monitoring of network event,[0018], [0019], show manager components communicating with each other. ).

As per claim 5,

the rejection of claim 1 is incorporated;

further Anderson discloses

- the software and/or hardware entity comprises one or more software and/or hardware components; wherein the first manager component starts up the software and/or hardware entity and the one or more software and/or hardware components; wherein the first manager component sends a notification to the second manager component to indicate that the software and/or hardware entity and the one or more software and/or hardware components have been started ([0020], for example, "provisioning element for non-real time circuits...performs...end point connections and port provisioning..."; [0018]-[0019])).

As per claim 6,

the rejection of claim 5 is incorporated;

further Anderson discloses

- the second manager component initializes one or more of the one or more software and/or hardware components; wherein the second manager component sends a notification to the first manager component to indicate that the one or more of the one or more software and/or hardware components have been initialized ([0020], for example, "provisioning element for non-real time circuits...performs...end point connections and port provisioning..."; [0018]-[0019])).

As per claim 7,

the rejection of claim 1 is incorporated;

further Anderson discloses

- the software and/or hardware entity comprises one or more software and/or hardware components; wherein the first and second manager components cooperate to initialize, monitor, and detect one or more failures of the software and/or hardware entity and one or more of the one or more software and/or hardware components, wherein the first and second manager components dynamically negotiate the management responsibilities. ([0021]).

As per claim 8,

the rejection of claim 7 is incorporated;

further Anderson discloses

- the first and second manager components cooperate to recover the software and/or hardware entity from the one or more failures ([0068], "...restored quickly in the event hardware failure...").

As per claim 9,

the rejection of claim 1 is incorporated;

further Anderson discloses

- the first manager component sends a request to the second manager component to cause the second manager component to perform a management operation of the one or more second management operations on the software and/or hardware entity ([0019]).

As per claim 11,

the rejection of claim 1 is incorporated;

further Anderson discloses

- in combination with the software and/or hardware entity, wherein the software and/or hardware entity operates outside of the high availability domain, wherein the high availability services software comprised the one or more second management operations; wherein the software and/or hardware entity interacts with the high availability domain ([0068], line 2, "...high

availability...").

As per claim 12,

the rejection of claim 11 is incorporated;

further Anderson discloses

- the software and/or hardware entity is connected with the high availability domain to employ one or more of the one or more second management operations of the high availability services software ([0068], line 2, "...high availability...").

As per claim 13,

the rejection of claim 12 is incorporated;

further Anderson discloses

- the software and/or hardware entity is connected with the first manager component to employ one or more of the one or more first management operations and to prevent autonomous control of the software and/or hardware entity by the high availability services software ([0068], line 2, "...high availability...").

As per claim 14,

the rejection of claim 1 is incorporated;

Anderson discloses

- in combination with the software and/or hardware entity, wherein the first manager component, the second manager component, and the software and/or hardware entity are responsible for one or more of setup and teardown of telecommunication connections ([0060], "...creating...and tearing down connections...").

As per claim 15,

the rejection of claim 1 is incorporated;

further Anderson discloses

- the software and/or hardware entity comprises one or more first software and/or hardware components and one or more second software and/or hardware components; wherein the first manager component controls the one or more first software and/or hardware components; wherein the second manager component controls the one or more second software and/or hardware components ([0018], for example, line 12-15, "...a traffic manager, a provisioning manager and a signaling manager perform all broadband and narrowband...and connections for all network devices." In this scenario, the first manager component can be a traffic manager/signaling manager; and the second manager component can be a provisioning manager; and the software and/or hardware entity is the network devices.).

As per claim 16,

Anderson discloses

- configuring a software and/or hardware entity for concurrent partial control by a first manager component of a legacy management system and a second manager component, wherein the second manager component comprises high availability services system software operating in a high availability domain([0018], for example, line 12-15, "...a traffic manager, a provisioning manager and a signaling manager perform all broadband and narrowband...and connections for all network devices." In this scenario, the first manager component can be a traffic manager/signaling manager; and the second manager component can be a provisioning manager; and the software and/or hardware entity is the network devices.)).

As per claim 17,

the rejection of claim 16 is incorporated;

further Anderson discloses

- allowing the software and/or hardware entity to accept one or more first management operations from the first manager component and one or more second management operations from the second manger component, wherein the first and second manager components cooperate to initialize, monitor, and

detect failures of the software and/or hardware entity ([0018], for example, line 12-15, "...a traffic manager, a provisioning manager and a signaling manager perform all broadband and narrowband...and connections for all network devices.", [0021], "...monitoring..."; [0058], "...provisioning..."; The examiner asserts that monitoring detect failures.)

As per claim 18,  
the rejection of claim 16 is incorporated;  
further Anderson disclose

- wherein the second manager component comprises high availability services software operating in a high availability domain, the method further comprising the steps of: operating the software and/or hardware entity outside of the high availability domain; and connecting the software and/or hardware entity with the high availability services software within the high availability domain ([0068], line 2, "...high availability...").

As per claim 19,  
the rejection of claim 16 is incorporated;  
further Anderson disclose

- sending one or more notifications between the first manager component and the second manager component to indicate occurrence of one or

more events associated with the software and/or hardware entity  
([0018], [0019]).

As per claim 20,  
the rejection of claim 16 is incorporated;  
further Anderson disclose

- wherein the software and/or hardware entity comprises one or more first software and/or hardware components, wherein the step of configuring the software and/or hardware entity for partial control by the first manager component and partial control by the second manager component comprises the steps of: connecting the one or more first software and/or hardware components with the first manager component to employ one or more first management operations of the first manager component; and connecting the one or more second software and/or hardware components with the second manager component to employ one or more second management operations of the second manager component and to prevent autonomous control of the software and/or hardware entity by the first manager component ([0018], for example, line 12-15, "...a traffic manager, a provisioning manager and a signaling manager perform all broadband and narrowband...and connections for all network devices."; [0068], line 2, "...high availability...").



As per claim 21,

Anderson discloses

- one or more computer-readable signal-bearing media; and means in the one or more media for configuring a software and/or hardware entity for partial control by a first manager component of a legacy management system and a second manager component, wherein the second manager component comprises high availability services system software operating in a high availability domain([0018], for example, line 12-15, "...a traffic manager, a provisioning manager and a signaling manager perform all broadband and narrowband...and connections for all network devices." In this scenario, the first manager component can be a traffic manager/signaling manager; and the second manager component can be a provisioning manager; and the software and/or hardware entity is the network devices.).

As per claim 22,

Anderson discloses

- first manager component and/or the second manager component access a configuration file to determine the management responsibilities of each of the first and second manager components ([0074]).

***Response to Arguments***

10. Referring to 35 U.S.C. 112 rejections in this office action, any argument related to "a legacy management system" is considered outside the scope of the specification.

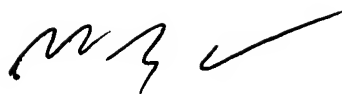
***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Philip Wang whose telephone number is 571-272-5934. The examiner can normally be reached on Mon - Fri 8:00AM - 4:00PM. Any inquiry of general nature or relating to the status of this application should be directed to the TC2100 Group receptionist: 571-272-2100.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wei Zhen can be reached on 571-272-3708. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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WEI ZHEN  
SUPERVISORY PATENT EXAMINER